

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:)	DRAG HARNESS
)	
PATRICIA LEWIS et al)	Confirmation No. 5508
)	
Serial No. 10/772,560)	Group Art Unit 3634
)	
Filed February 5, 2004)	Examiner Alvin C. Chin-Shue

APPELLANTS' REPLY TO EXAMINER'S ANSWER

Mail Stop Appeal Briefs-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer dated December 23, 2010, Appellants submit the following reply.

The Examiner's Answer Ignores Appellants' Argument that
The Proposed Modification is Improper Because it Changes the
Principle of Operation of Both Hengstenberger et al and Nunn et al

The Examiner's Answer fails to acknowledge or address in any fashion Appellants' arguments presented under subheading (2) beginning at page 5 and extending through page 6 of Appellants' Brief. Specifically, the Examiner's Answer does nothing to address or acknowledge that the proposed modification improperly changes the principle of operation of both Hengstenberger et al and Nunn et al contrary to the express prohibitions under the standards set forth in the case law in MPEP (see MPEP §2143.01 VI stating that "the

proposed modification cannot change the principle of operation of a reference” and that “if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references **are not sufficient to render the claims prima facie obvious**” (emphasis added). The violation of these express prohibitions is fatal to the rejection and cannot simply be ignored.

The Examiner's Answer Ignores the Express Objects of Hengstenberger et al and Nunn et al and Improperly Attempts to Characterize the Purpose of Hengstenberger et al so Broadly as to Render the Express Object of Hengstenberger et al Meaningless

As noted under subheading (1) beginning at page 3 and extending through the top of page 5 of Appellants' Brief, Hengstenberger et al is specifically directed towards providing “a safety harness which is self-tightening and securing upon the wearer.” (column 1, lines 67-68). Hengstenberger et al achieves this express purpose by providing a safety harness having “a continuous loop of material connected to itself at a point to define a first large loop and a second smaller loop” (column 2, lines 13-16), so that “a polling force on the handle loop **16 cinches** or grips the wearer of the jacket **by placing opposing forces across the middle of the back and the front of the shoulders**, assuring that maximum engagement of the victim is achieved by the harness 10” (column 3, lines 40-44) (emphasis added). The Examiner's Answer improperly ignores all of this by characterizing the purpose of Hengstenberger et al as simply being “dragging the dead weight of a victim to be rescued” (page 6 of Examiner's Answer), while relying on a citation to a selected portion (column 3, lines 34-54) of one paragraph of Hengstenberger et al that, when cited in full, reveals the true express purpose of Hengstenberger et al, as shown below:

In use, if the wearer of the service coat 20 were found to be in need of rescue from a perilous situation, an individual may simply grab the handle loop 16 from beneath the collar 36, separate it by disengaging the fastening means 18 from the jacket 20, and drag the victim to safety by the handle loop 16. **It will be understood that a pulling force on the handle loop 16 cinches or grips the wearer of the jacket 20 by placing opposing forces across the middle of the back and the front of the shoulders, assuring that maximum engagement of the victim is achieved by the harness 10.** (emphasis added)

This overly broad characterization of the purpose of Hengstenberger et al does nothing to address the fundamental flaw in the rejection that is expressly prohibited by MPEP §2143.01 V.

The Examiner's Answer Misses the Point that the Two Primary References Relied on in the Rejection Both Expressly Teach the Opposite of the Critical Modification Proposed by the Examiner

The Examiner's Answer misses the significance of the express purpose of Nunn et al to provide a harness for a child "that can quickly applied and removed from the child, and which will not slide or fall from the child," (column 1, lines 32-33) and that none achieves this by utilizing its plate (13) to create a bight (19) such that the "bight 18 is pulled through the bight 19; tightening the harness sufficiently to assure that it will not fall off" (column 2, lines 3-5) because "the friction between bights 18 and 19 is sufficient to retain the parts in adjusted position and still permit the parts to be easily adjusted for removal or to assure the child's comfort." (column 2, lines 25 and 28). This is significant because it is consistent with Hengstenberger et al's express teaching against the desirability of fixed length arm loops, which is the critical modification proposed by the Examiner. The express teachings of Hengstenberger et al and Nunn et al cannot be ignored, just as the principles of operation of

Hengstenberger et al and Nunn et al cannot be ignored, just as the express objects/purposes of Hengstenberger et al and Nunn et al cannot be ignored.

There can be no rationale underpinning to support the legal conclusion of obviousness where the proposed modification changes the principle of operation of the prior art, renders the prior art unsatisfactory for its intended purpose, and/or is contrary to the teachings of the primary references relied upon in the rejection. As annunciated by the Supreme Court in *KSR International Co. v. Teleflex, Inc.*, (82 USPQ2d at 1396) there must be some articulated reason with some rational underpinning to support the legal conclusion of obviousness. It is simply not rational to modify a reference so as to completely change its principle of operation. Nor is it rationale to modify a reference so that it is unsatisfactory for its intended purpose. Nor is it rationale to modify a reference contrary to its express teachings. Accordingly, for each of these reasons alone, and together, the rejections are improper and should be withdrawn.

The Examiner's Answer Again Asserts that the Prior Art
References are "Analogous Arts" and Again Does Absolutely
Nothing to Overcome the Express and Absolute Prohibitions
in the MPEP Against the Type of Modifications Proposed in the Rejections

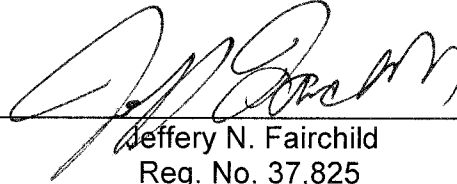
As discussed in the first full paragraph of Appellants' Brief at page 7, the Examiner's continued assertions regarding "analogous arts" do nothing to overcome the failings of the rejections and are irrelevant to the express prohibition stated in MPEP §2143.01 V and VI.

In view of the foregoing, the rejections should be withdrawn.

Respectfully submitted,

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By



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